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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH CHARLES DIGESSTI,

Defendant and Appellant.

C064599

(Super. Ct. No.
09F09018)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On January 27, 2009, defendant Joseph Charles Digessti pleaded no contest to assault by means likely to produce great bodily injury, in exchange for a three-year prison sentence, and the elimination of an allegation that he used a deadly weapon, a knife. The factual basis for the plea shows that on December 10, 2009, defendant assaulted William Digessti by means of force likely to produce great bodily injury.

The trial court sentenced defendant to three years in prison, pursuant to the plea. The trial court credited

defendant with 63 days of actual custody, and 62 days of conduct credit, pursuant to recent amendments to Penal Code section 4019.

Defendant timely filed this appeal. He sought a certificate of probable cause, claiming the bargain had been for two years, but his attorney's mishandling of the plea, coupled with medications defendant was taking, led defendant to enter the plea in exchange for a three-year sentence.

The trial court denied the request for a certificate of probable cause.

We appointed counsel to represent defendant on appeal. Counsel filed a brief setting forth the facts of the case and requesting this court to review the record and determine whether there are any arguable issues on appeal. (See *Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

We note that the abstract of judgment is incorrect. It describes the offense as assault "w/ DEADLY WEAPON," but, as we have explained, the knife allegation was stricken as part of the plea bargain. An abstract must be accurate. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Zackery* (2007) 147 Cal.App.4th 380, 389-390.) We will direct the trial court to prepare a new abstract.

Having examined the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare and forward to the Department of Corrections and Rehabilitation a corrected abstract of judgment.

HULL, Acting P. J.

We concur:

BUTZ, J.

CANTIL-SAKAUYE, J.